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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE CONAGRA FOODS, INC.

Case No. CV 11-05379-MMM
(AGR_x)MDL NO. 2291

CLASS ACTION

**NOTICE OF AMENDED MOTION
AND AMENDED MOTION FOR
CLASS CERTIFICATION AND
APPOINTMENT OF CLASS
COUNSEL**

DATE: November 17, 2014

TIME: 10:00 a.m.

CTRM.: 780

JUDGE: Hon. Margaret M. Morrow

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 17, 2014, at 10:00 a.m., or as soon thereafter as they may be heard, in Courtroom 780 of the United States District Court for the Central District of California, 225 East Temple Street, Los Angeles, CA 90012, Plaintiffs Robert Briseño, Michele Andrade, Jill Crouch, Julie Palmer, Pauline Michael, Cheri Shafstall, Dee Hopper-Kercheval, Kelly McFadden, Necla Musat, Maureen Towey, Erika Heins, Rona Johnston, and Anita Willman (collectively “Plaintiffs”) will, and hereby do, respectfully move this Honorable Court to certify this action as a class action against Defendant, ConAgra Foods, Inc. (“ConAgra”), and enter an Order defining the classes, appointing class counsel, and also finding:

1. That the prerequisites and requirements for certification of a class action under Rules 23(a), 23(b)(2), 23(b)(3), and (alternatively) 23(c)(4) of the Federal Rules of Civil Procedure have been satisfied on the following bases:
 - a. The number of Class Members is so numerous that joinder of all members thereof is impracticable;
 - b. There are questions of law and fact common to each of the Classes;
 - c. The claims of the Class Representatives are typical of the claims of each of the Classes they seek to represent;
 - d. The Class Representatives will fairly and adequately represent the interests of each of the Classes they respectively seek to represent;
 - e. The questions of law and fact common to the members of each of the Classes predominate over any questions affecting only individual members of each of the Classes;

- f. A class action is superior to other available methods for the fair and efficient adjudication of the controversy;
 - g. ConAgra has acted or refused to act on grounds that apply generally to the Classes, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to each of the Classes as a whole;
 - h. Alternatively, certifying the Classes with respect to particular issues is appropriate pursuant to Federal Rule of Civil Procedure 23(c)(4); and
 - i. The law firms of Milberg LLP and Grant & Eisenhofer P.A. will fairly and adequately represent the interests of each Class as Class Counsel and are adequate Class Counsel under all of the factors set forth in Federal Rule of Civil Procedure 23(g)(1) and (4).
2. That the following Classes are certified by the Court:
 - a. Robert Briseño and Michele Andrade as class representatives for a class consisting of all persons in California who purchased Wesson brand cooking oils, including Wesson Vegetable Oil, Wesson Canola Oil, Wesson Corn Oil, and Wesson Best Blend (collectively, “Wesson Oils”) between June 28, 2007, and the present (the “California Class”).
 - b. Jill Crouch as class representative for a class consisting of all persons in Colorado who purchased Wesson Oils between January 12, 2009, and the present (the “Colorado Class”).
 - c. Julie Palmer as class representative for a class consisting of all persons in Florida who purchased Wesson Oils between January 12, 2008, and the present (the “Florida Class”).

- d. Pauline Michael as class representative for a class consisting of all persons in Illinois who purchased Wesson Oils between January 12, 2007, and the present (the “Illinois Class”).
- e. Cheri Shafstall as class representative for a class consisting of all persons in Indiana who purchased Wesson Oils between January 12, 2006, and the present (the “Indiana Class”).
- f. Dee Hopper-Kercheval as class representative for a class consisting of all persons in Nebraska who purchased Wesson Oils between January 12, 2008, and the present (the “Nebraska Class”).
- g. Kelly McFadden and Necla Musat as class representatives for a class consisting of all persons in New York who purchased Wesson Oils between January 12, 2006, and the present (the “New York Class”).
- h. Maureen Towey as class representative for a class consisting of all persons in Ohio who purchased Wesson Oils between January 12, 2006, and the present (the “Ohio Class”).
- i. Erika Heins as class representative for a class consisting of all persons in Oregon who purchased Wesson Oils between January 12, 2006, and the present (the “Oregon Class”).
- j. Rona Johnston as class representative for a class consisting of all persons in South Dakota who purchased Wesson Oils between January 12, 2006, and the present (the “South Dakota Class”).
- k. Anita Willman as class representative for a class consisting of all persons in Texas who purchased Wesson Oils between January 12, 2010, and the present (the “Texas Class”).

1 3. That governmental entities; ConAgra, and its affiliates, subsidiaries,
2 employees, current and former officers, directors, agents, and
3 representatives; and the members of this Court and its staff are
4 excluded from the Classes;

5 4. That Milberg LLP and Grant & Eisenhofer P.A. are appointed Class
6 Counsel for each of the aforementioned Classes; and

7 5. That the Court will direct the form of notice to the Classes pursuant to
8 Federal Rule of Civil Procedure 23(c)(2) by separate Order.

9 As indicated in the accompanying Memorandum of Points and Authorities,
10 the following are the specific claims as to each of the Classes for which Plaintiffs
11 seek certification:

12 1. California Class: California Consumer Legal Remedies Act, Cal. Civ.
13 Code §§ 1750, *et seq.*; California's Unfair Competition Law, Cal. Bus.
14 & Prof Code §§ 17200, *et seq.*; and Cal. Bus. & Prof. Code §§ 17500,
15 *et seq.*; Breach of Express Warranty, Cal. Com. Code § 2313; and
16 Breach of Implied Warranty, Cal. Com. Code § 2314.

17 2. Colorado Class: Colorado Consumer Protection Act, Colo. Rev. Stat.
18 §§ 6-1-101, *et seq.*; Breach of Express Warranty, Colo. Rev. Stat. § 4-
19 2-313; Breach of Implied Warranty, Colo. Rev. Stat. § 4-2-314; and
20 Unjust Enrichment.

21 3. Florida Class: Florida Deceptive and Unfair Trade Practices Act, Fla.
22 Stat. Ann. §§ 501.201, *et seq.*; and Unjust Enrichment.

23 4. Illinois Class: Illinois Consumer Fraud and Deceptive Business
24 Practices Act, 815 ILCS §§ 505/1, *et seq.*; and Unjust Enrichment.

25 5. Indiana Class: Breach of Express Warranty, Ind. Code § 26-1-2-313;
26 Breach of Implied Warranty, Ind. Code § 26-1-2-314; and Unjust
27 Enrichment.

6. Nebraska Class: Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, *et seq.*; Breach of Express Warranty, Neb. Rev. Stat. § 2-313; Breach of Implied Warranty, Neb. Rev. Stat. § 2-314; and Unjust Enrichment.
7. New York Class: New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*; Breach of Express Warranty, N.Y. U.C.C. Law § 2-313; and Unjust Enrichment.
8. Ohio Class: Ohio Consumer Sales Practices Act, Ohio Rev. Code §§ 1345.01, *et seq.*; and Unjust Enrichment.
9. Oregon Class: Oregon Unfair Trade Practices Act, Or. Rev. Stat §§ 646.605, *et seq.*; Breach of Express Warranty, Or. Rev. Stat. § 72.3130; and Unjust Enrichment.
10. South Dakota Class: South Dakota Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*; Breach of Express Warranty, S.D. Codified Laws. § 57A-2-313; Breach of Implied Warranty, S.D. Cod. Laws. § 57A-2-314; and Unjust Enrichment.
11. Texas Class: Texas Deceptive Trade Practices - Consumer Protection Act, Tex. Bus. & Corn. Code §§ 17.41, *et seq.*; and Unjust Enrichment.

This Amended Motion is based on this Notice, the accompanying Memorandum of Points and Authorities, the accompanying Declarations of Colin Weir, Elizabeth Howlett, David E. Azar, and Plaintiffs Robert Briseño, Jill Crouch, Julie Palmer, Pauline Michael, Dee Hopper-Kercheval, Kelly McFadden, Maureen Towey, Rona Johnston, and Anita Willman (submitted under the caption, Declarations of Named Plaintiffs in Support of Plaintiffs' Amended Motion for Class Certification), all other pleadings and papers on file in this action, including the Court's Order, dated August 1, 2014 (Dkt. 350), permitting Plaintiffs to file this

1 Amended Motion, and such oral and documentary evidence and argument as may
2 be presented at the time of hearing.

3 This Amended Motion is made pursuant to the Court's Order, dated August
4 1, 2014 (Dkt. 350), and pursuant to Civil Local Rule 7-3, the original motion for
5 class certification was made following conferences of counsel as identified in the
6 original notice of motion.

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8 DATED: September 8, 2014

MILBERG LLP
DAVID E. AZAR

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10
11 */s/ David E. Azar*

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